**Remarks/Arguments**

Claims 1-40 are now pending in this application. In the January 16, 2007 Office Action, Claims 1-15 and 32 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-12 and 15-17 of co-pending Application No. 10/770,951. Claim 15 was rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 1-4, 14, 15, 16, 20, 23, 30 and 31 were rejected under 35 U.S.C. 102(e) as being anticipated by Lajoie, et al., U.S. Patent No. 7,093,244, (hereinafter "*Lajoie*"). Claims 5-8, 17-19, 24-26 and 37-40 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of Reuss, U.S. Publication No. 2003/0165230, (hereinafter "*Reuss*") and further in view of Luby, et al, U.S. Publication No. 2002/0129159 (hereinafter "*Luby*"). Claims 9, 10, and 32-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of DeRoo et al., U.S. Patent No. 5,596,713, (hereinafter "*DeRoo*"). Claims 11-13, 21, 22 and 27-29 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of Wu et al., U.S. Patent No. 6,732,267, (hereinafter "*Wu*").

By this amendment, claims 4, 20, and 21 have been cancelled. Claims 1, 2, 15, and 16 have been amended. Following entry of this amendment, claims 1-3, 5-19, and 22-40 will be pending in the present application. For the reasons set forth below, the applicants respectfully request reconsideration and immediate allowance of this application.

Claim Objections

Claim 2 was objected to because of a minor informality. Claim 2 has been amended in accordance with the suggestion presented by the Office Action. Withdrawal of the claim objection is respectfully requested.

Claim Rejections

Double Patenting Rejection

Claims 1-15 and 32 are rejected on the ground of nonstatutory double patenting over claims 1-12 and 15-17 of co-pending U.S. Application No. 10/770,951 which, similar to the current patent application, is assigned to American Megatrends, Inc. Since this is a provisional double patenting rejection, this double patenting rejection will be addressed, if necessary, once

allowable claims associated with either the current application or the copending application are determined.

Claim Rejections Under 35 U.S.C. 101

In the January 16, 2007 Office Action, Claim 15 was rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 15 has been amended to claim a "computer storage medium" instead of a "computer-readable medium." As stated on page 4 of the instant application, "[t]he computer program product may be a computer storage media readable by a computer system and encoding a computer program of instructions for executing a computer process." Accordingly, the applicants respectfully submit that claim 15 claims statutory subject matter and fully complies with 35 U.S.C. 101. Withdrawal of the claim rejection under 35 U.S.C. 101 is respectfully requested.

Claim Rejections Under 35 U.S.C. 102(e)

Independent Claim 1

In the January 16, 2007 Office Action, claims 1 and 4 were rejected under 35 U.S.C. 102(e) as being anticipated by *Lajoie*. Claim 1 has been amended to incorporate the recitations of cancelled claim 4. With respect to amended claim 1, the Office Action contends that *Lajoie* at Figure 3 and col. 6, lines 31-38 anticipates "rebooting the network attached computers to an operating system independent operating environment." (Paper No. 20070108 at p. 6). Applicants respectfully disagree.

The Office Action contends that the cited portion of *Lajoie* teaches "wherein the application program ustes [sic] the boot ROM 200 functions to execute from the server 110 on the 8052 micro-controller." (Paper No. 20070108 at p. 6). It is unclear the relevance of the recited portion of *Lajoie* with respect to the amended claim 1. The cited portion of *Lajoie* appears to simply state that the server 110 uses the functions in the boot ROM 200 to erase, write, and read to the NVM. This interpretation is consistent with *Lajoie*, which also states that "[t]he boot ROM 200 contains a library of functions for erasing, writing and reading to the NVM." (*Lajoie* at col. 4, lines 50-52). Nothing in the cited portion of *Lajoie* discloses "rebooting the network attached computers to an operating system independent operating environment," as claimed in claim 1.

Similarly, nothing in *Lajoie* discloses "receiving a new firmware image over the distributed network in the operating system independent environment" and "in response to receiving the new firmware image, updating a current firmware within the network attached computer with the new firmware image, in the operating system independent environment," also as claimed in claim 1. As stated in page 15 of the instant application, "[u]pdating the BIOS during an OS-independent recovery state enables the manager computer 4 to interface with an update the network attached computers regardless of the type or version of operating system a network attached computer executes." In contrast, *Lajoie* makes no mention of the operating system in its disclosure.

Accordingly, *Lajoie* does not teach, suggest, or describe each and every element of amended independent claim 1. The applicants further submit that claims 2-3 and 5-15 are also patentable because they contain recitations not taught by *Lajoie* and because these claims depend from an allowable independent claim. The applicants therefore submit that claims 1-3 and 5-15 are in condition for immediate allowance.

Claim 2

In the January 16, 2007 Office Action, claim 2 was rejected under 35 U.S.C. 102(e) as being anticipated by *Lajoie*. As discussed in greater detail with respect to claim 1 above, *Lajoie* does not disclose "in response to rebooting to an operating system independent operating environment, sending a notification of readiness to update from the network attached computer over the distributed network to the manager computer," as claimed in amended claim 2.

Accordingly, *Lajoie* does not teach, suggest, or describe each and every element of amended claim 2. The applicants therefore submit that claim 2 is in condition for immediate allowance.

Independent Claim 16

In the January 16, 2007 Office Action, claims 16 and 20 were rejected under 35 U.S.C. 102(e) as being anticipated by *Lajoie*. Claim 21 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *Wu*. Claim 16 has been amended to incorporate the recitations of cancelled claims 20 and 21. With respect to amended claim 16, the Office Action contends that *Wu* at Figure 2, element 226 teaches or suggests "booting the network attached

computer with the current firmware in response to determining that the current firmware within the network attached computer is valid." (Paper No. 20070108 at p. 13). The applicants respectfully disagree.

*Wu* at Figure 2, element 226 teaches a reboot after successfully updating a BIOS with new firmware. Amended claim 16, however, is directed to booting the network attached computer with the current firmware after determining that the current firmware is valid. As such, neither *Lajoie* nor *Wu*, alone or in combination, teaches or suggests "booting the network attached computer with the current firmware in response to determining that the current firmware within the network attached computer is valid," as claimed in claim 16.

Accordingly, *Lajoie* and *Wu*, alone or in combination, do not teach, suggest, or describe each and every element of amended independent claim 16. The applicants further submit that claims 17-19 and 22-31 are also patentable because they contain recitations not taught by *Lajoie* and *Wu* and because these claims depend from an allowable independent claim. The applicants therefore submit that claims 16-19 and 22-31 are in condition for immediate allowance.

Claim Rejections Under 35 U.S.C. 103(a)

Independent Claim 32

In the January 16, 2007 Office Action, claim 32 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *DeRoo*. With respect to claim 32, the Office Action cites *DeRoo* at col. 38, lines 25-32 as teaching or suggesting a second computer comprising a network attached computer operative to "monitor a communications port of the second computer for the instruction to update the firmware." (Paper No. 20070108 at p. 11-12). The applicants respectfully disagree.

The Office Action contends that the cited portion of *DeRoo* teaches "wherein an application monitors a port for an instruction." (Paper No. 20070108 at p. 11). *DeRoo* generally teaches an apparatus and method to protect EEPROMs from erasure by tracking and intercepting software commands that would erase the device. (*DeRoo* at Abstract). The portion of *DeRoo* cited by the Office Action discloses that "the HUI [Human User Input Interface] 700 has the capability to enable CPU/SCP communication through an alternate set of addresses to allow access to special SCP [System Control Processor] command sequences that might be intercepted by operating systems that monitor accesses to standard ports." (*DeRoo* at col. 38, lines 32-37).

While *DeRoo* does appear to contain the common terms "monitor" and "ports" as claimed in claim 32, the remainder of the reference has no similarities to the claim.

In particular, the Office Action does not address "monitor…for the instruction to update the firmware" as claimed in claim 32. The recited portion of *DeRoo* teaches operating systems intercepting "SCP command sequences" but does not teach or suggest monitoring a communications port for an "instruction to update the firmware." It is further submitted that neither *Lajoie* nor *DeRoo*, alone or in combination, teaches or suggests "in response to receiving the instruction, transition to an OS independent recovery state," as claimed in claim 32.

Accordingly, *Lajoie* and *DeRoo*, alone or in combination, do not teach, suggest, or describe each recitation of independent claim 32. The applicants further submit that claims 33-36 are also patentable because they contain recitations not taught by *Lajoie* and *DeRoo* and because these claims depend from an allowable independent claim. Accordingly, the applicants submit that claims 32-36 are in condition for immediate allowance.

Independent Claim 37

In the January 16, 2007 Office Action, claim 37 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *Reuss* and further in view of *Luby*. With respect to claim 37, the Office Action contends that "[while] *Lajoie* does not expressly discloses [sic] the manager computer monitoring a port of the first computer for at least one request...[,] it would have been obvious in light of *Lajoie*'s disclosure of the device initializing the upgrade and *Reuss'* teaching of monitoring a port." The applicants respectfully disagree.

The Office Action provides no citation to where *Reuss* teaches or suggests monitoring a port. It is respectfully submitted that nowhere in *Reuss* does it teach or suggest monitoring a port, much less "monitoring a communication port of the first computer for at least one recovery request," as claimed in claim 37. It is further submitted that neither *Lajoie* nor *Reuss*, alone or in combination, teaches or suggests "determine whether a current firmware on the second computer is invalid while in an OS independent recovery state," also as claimed in claim 37.

Accordingly, *Lajoie*, *Reuss*, and *Luby*, alone or in any combination, do not teach, suggest, or describe each recitation of independent claim 37. The applicants further submit that claims 38-40 are also patentable because they contain recitations not taught by *Lajoie*, *Reuss*, and *Luby*

and because these claims depend from an allowable independent claim. Accordingly, the applicants submit that claims 37-40 are in condition for immediate allowance.

Claims 9 and 10

In the January 16, 2007 Office Action, claims 9 and 10 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *DeRoo*. With respect to claim 9, the Office Action cites *DeRoo* at col. 38, lines 25-32 as teaching or suggesting "monitoring a communication port of each network attached computer for the instruction to begin the recovery procedure." (Paper No. 20070108 at p. 11). The applicants respectfully disagree.

The Office Action contends that the cited portion of *DeRoo* teaches "wherein an application monitors a port for an instruction." (Paper No. 20070108 at p. 11). *DeRoo* generally teaches an apparatus and method to protect EEPROMs from erasure by tracking and intercepting software commands that would erase the device. (*DeRoo* at Abstract). The portion of *DeRoo* cited by the Office Action discloses that "the HUI [Human User Input Interface] 700 has the capability to enable CPU/SCP communication through an alternate set of addresses to allow access to special SCP [System Control Processor] command sequences that might be intercepted by operating systems that monitor accesses to standard ports." (*DeRoo* at col. 38, lines 32-37). While *DeRoo* does appear to contain the common terms "monitor" and "ports" as claimed in claim 9, the remainder of the reference has no similarities to the instant claims.

Among a number of other differences, the Office Action does not address "monitoring…for the instruction to begin the recovery procedure" as claimed in claim 9. The recited portion of *DeRoo* teaches operating systems intercepting "SCP command sequences" but does not teach or suggest monitoring a communications port for an "instruction to begin the recovery procedure." It is further submitted that neither *Lajoie* nor *DeRoo*, alone or in combination, teaches or suggests "rebooting the network attached computer to an operating system independent operating environment," as claimed in amended claim 1, from which claim 9 depends.

With respect to claim 10, the Office Action admits that *Lajoie* and *DeRoo* do not "expressly disclose 'a recovery OS application…upon only one communication port and utilizes additional processor resources…only upon receiving the instruction.'" (Paper No. 20070108 at p. 12). However, the Office Action conclusorily states, without providing any objective

evidence, that "in light of the teaching of an application monitoring a port for an instruction, it would have been obvious to one or ordinary skill in the art to employ a dedicated particular application." (Paper No. 20070108 at p. 12). It is respectfully submitted that *prima facie* obviousness cannot be established from mere conjecture, speculation, or hindsight gleaned from the instant application. In particular, the Office Action appears to infer disclosure that is not shown and not described in the references. Speculation such as this is clearly improper.

Accordingly, *Lajoie* and *DeRoo*, alone or in combination, do not teach, suggest, or describe each recitation of claims 9 and 10. Accordingly, the applicants submit that claims 9 and 10 are in condition for immediate allowance.

Claims 12, 22, and 28

In the January 16, 2007 Office Action, claims 12, 22, and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *Wu*. With respect to claims 12 and 28, the Office Action contends that *Wu* at Figure 2, element 226 teaches or suggests "when it is determined that the current firmware is valid then initiating a boot of the network attached computer utilizing the current firmware." (Paper No. 20070108 at p. 13). With respect to claim 22, the Office Action contends that *Wu* at Figure 2, element 226 teaches or suggests "in response to determining that the current firmware is valid, booting the network attached computer." The applicants respectfully disagree.

As discussed with respect to amended claim 16 above, *Wu* at Figure 2, element 226 teaches a reboot after successfully updating a BIOS with new firmware. Claims 12 and 28, however, are directed to initiating a boot of the network attached computer utilizing the current firmware after determining that the current firmware is valid. Further, claim 22 is directed to booting the network attached computer in response to determining that the current firmware is valid. As such, neither *Lajoie* nor *Wu*, alone or in combination, teaches or suggests "when it is determined that the current firmware is valid then initiating a boot of the network attached computer utilizing the current firmware," as claimed in claims 12 and 28. Further, neither *Lajoie* nor *Wu*, alone or in combination, teaches or suggests "in response to determining that the current firmware is valid, booting the network attached computer," as claimed in claim 22.

Accordingly, *Lajoie* and *Wu*, alone or in combination, do not teach, suggest, or describe each and every element of claims 12, 22, and 28. The applicants therefore submit that claims 12, 22, and 28 are in condition for immediate allowance.

Claim 29

In the January 16, 2007 Office Action, claim 29 was rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *Wu*. Neither *Lajoie* nor *Wu*, alone or in combination, teaches or suggests "wherein the firmware is recovered while the network attached computer is in an OS independent state," as claimed in claim 29.

Accordingly, *Lajoie* and *Wu*, alone or in combination, do not teach, suggest, or describe each and every element of claim 29. The applicants therefore submit that claim 29 is in condition for immediate allowance.

Claims 33 and 35

In the January 16, 2007 Office Action, claims 33 and 35 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *DeRoo*. With respect to claim 33, the Office Action does not address and neither *Lajoie* nor *DeRoo*, alone or in combination, teaches or suggests "wherein the first computer is further operative to reboot the second computer utilizing the current firmware after the current firmware is updated with the new firmware image." With respect to claim 35, the Office Action does not address and neither *Lajoie* nor *DeRoo*, alone or in combination, teaches or suggests "wherein the system further comprises a display device wherein the first computer is further operative to display update status messages via the display device."

Accordingly, *Lajoie* and *DeRoo*, alone or in combination, do not teach, suggest, or describe each and every element of claims 33 and 35. The applicants therefore submit that claims 33 and 35 are in condition for immediate allowance.

Claim 38 and 40

In the January 16, 2007 Office Action, claims 38 and 40 were rejected under 35 U.S.C. 103(a) as being unpatentable over *Lajoie* in view of *Reuss* and further in view of *Luby*. With respect to claim 38, the Office Action does not address and *Lajoie*, *Reuss*, and *Luby*, alone or in

any combination, do not teach or suggest "wherein the first computer is further operative to reboot the second computer with the current firmware after the current firmware is updated with the new firmware image." With respect to claim 40, the Office Action does not address and *Lajoie*, *Reuss*, and *Luby*, alone or in any combination, do not teach or suggest "wherein the firmware comprises a BIOS of the second computer and wherein recovery of the firmware is executed while the second computer is in an OS independent state."

Accordingly, *Lajoie*, *Reuss*, and *Luby*, alone or in any combination, do not teach, suggest, or describe each and every element of claims 38 and 40. The applicants therefore submit that claims 38 and 40 are in condition for immediate allowance.

**Conclusion**

In view of the foregoing amendment and remarks, the applicants respectfully submit that all of the pending claims in the present application are in condition for allowance. Reconsideration and reexamination of the application and allowance of the claims at an early date is solicited. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact the applicants' undersigned attorney at the number below.

Respectfully submitted,

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Date: April 12, 2007

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